

**Bodh Narain Vs. Mahomed Moosa**

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**Court :** Kolkata

**Decided On :** Mar-08-1899

**Reported in :** (1899)ILR26Cal650

**Judge :** Prinsep, ;Banerjee and ;Rampini, JJ.

**Appellant :** Bodh Narain

**Respondent :** Mahomed Moosa

**Judgement :**

**Banerjee, J.**

1. In this appeal, which arises out of an application for extension of time for the satisfaction of a decree in a suit for ejectment for arrears, of rent under Section 66 of the Bengal Tenancy Act, the question for determination is, whether the extension of time authorized by Sub-section 3 of Section 66 can be granted by the Court after decree. The Courts below have answered it in the affirmative, and granted the judgment-debtor's application for extension of time, which was made before the expiry of fifteen days from the dated of the decree; and hence this appeal by the decree-holder.

2. The contention on behalf of the appellant is that the extension of time authorized by Section 66 of the Bengal Tenancy Act can be granted by the Court only at the time of passing the decree, and that after the decree is passed, the

Court has no power to extend the time within which it may be satisfied. On the other hand, it is contended for the respondent that there is no such limitation on the Court's power to grant extension of time.

3. Section 66, after providing in Sub-section (1) for the institution of a suit, for ejectment of certain classes of tenants for arrears of rent, enacts in Sub-section (2) that, 'A decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days on the date of the decree, or when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.' And Sub-section (3) which provides for extension of time runs in these words 'The Court may for special reasons extend the period of fifteen days mentioned in this section.'

4. The main arguments in support of the respondent's contention are the following:

5. In the first place, there is nothing in the language of Section 66 to limit the power of the Court in the manner contended for on behalf of the appellant, the section merely providing that the Court may for special reasons extend the period; and in order to give effect to the appellant's contention we must interpolate the words 'at the time of passing the decree' after the word 'may' in Sub-section (3). I may add that the word 'extend,' to use the language of Cotton, L.J., in *re Yeadon Local Board* (1889) L.R., 41 Ch. D., 52 (58): 58 L.J., Ch., 563 (566), 'necessarily infers the existence of an originally limited time;' and I think it carries with it the idea of a subsequent enlargement of time.

6. In the second place, the general tenor of the section is opposed to any such interpolation. For Sub-section (2), while providing that the decree shall specify the amount of the arrear and the interest if any, does not require that the decree shall specify the time, whether it be fifteen days or more, within which it shall not be executed; and Sub-section (3) speaks of the period of fifteen days as 'mentioned in the section,' and not as 'specified in the decree,' and there is no good reason why when the ordinary period of fifteen days for which execution must be stayed, is not required to be mentioned in the decree, any special and extended period for which the Court may think fit to stay execution should be specified in the decree.

7. In the third place, ejectment for non-payment of rent being in the nature of a penalty or forfeiture, the provision in Sub-section (3) of Section 66 for extension of time for payment to avoid the penalty of forfeiture is a remedial provision, and should be construed liberally, so as not to restrict to remedy and make it inapplicable to cases to which it ought obviously to extend, but which it would be prevented from reaching if the appellant's contention be given effect to. Thus, take a case in which the arrear due is a fairly large amount, but the tenant, when the decree is passed, has no special reason upon which he can ask for extension of time for payment. Suppose that he was coming to Court with the money due, in time to be able to deposit it in Court within fifteen days from the date of the decree, when he was robbed on the way, and so he finds himself unable to make the deposit in time. He has now a special reason for asking for extension of time, but the Court will have no power to grant such extension if the appellant's contention be correct. Such a result could not have been intended by the Legislature.

8. The only arguments urged for the appellant in support of the opposite view are: First, that the section contemplates the procedure prior to decree and not any matters subsequent to the decree; second, that if the Court be held authorized to extend the time after the decree, it may extend the time any number of times, and this indefinite extension of time might render the limitation of time in Sub-section (2) practically nugatory in many cases; and third, that the cases of *Sunkur Singh v. Huree Mohun Thakoor* (1874) 22 W.R., 460, and *Nubo Kisto Mookerjee v. Ramessur Goopto* (1866) 18 W.R., 412, note: 2 Wyman, 75, go to show that the Court executing a decree for ejectment cannot modify the terms of the decree with regard to the time within which payment should be made.

9. Let us examine these arguments. As to the first, I do not think it correct to say that Section 66 only contemplates the procedure prior to decree when Sub-section (2) expressly says: 'The decree shall not be executed if that amount' (i.e., the amount of the arrear of rent or interest) 'and the costs of the suit are paid into Court within fifteen days from the date of the decree,'--that is, speaks of payment into Court which is to be after the decree.

10. As to the second argument, though upon the respondent's view there may be granted more extensions of time than one, it does not follow that the proceedings may be indefinitely protracted, when the extension is to be granted not as a matter of course, but only 'for special reasons,' and when the judicial discretion of the Court will be a sufficient safeguard against any unreasonable extension of time.

11. As to the third and last argument, the cases cited have no bearing upon the question now before us. They were decided under the former law (Act X of 1859, Section 78, and Bengal Act VIII of 1869, Section 52), under which the Court had no power to extend the period of fifteen days. In the earlier of the two cases cited, this Court nevertheless allowed a decree directing execution to be stayed for a longer period than fifteen days to stand, on the ground that the Court which had power to determine the matter on the merits might pass such a decree. And in the later case, namely, *Sunkur Singh v. Huree Mohun Thakoor* (1874) 22 W.R. 460, the learned Judges of this Court, in distinguishing the earlier case from the one before them, observed: 'But we do not think that either of the Judges who gave their opinion in that case intended to lay down that any other Court than the Court which had the merits of the case before it, and therefore was able to pass a sufficient and proper decree between the parties, could modify the terms of the decree with regard to the period within which the payment should be made, in order to save the judgment-debtor from the alternative consequences of the original decree.' No doubt that was so under the old law; and as I understand the two cases cited, what they lay down is this, that though under the general power which the Court has to make a proper decree according to the merits of the case, the Court may, when making its decree in a suit for ejectment for non-payment of arrears of rent, under Section 78 of Act X of 1859 or Section 52 of Bengal Act VIII of 1869, provide in the decree that it shall not be executed for any period exceeding fifteen days, yet, after the decree is once made, the Court has no power to extend the statutory period of fifteen days. But the reason of this was that the Court had no power to extend the time under the old law. The present law expressly gives the Court power to extend the time; and if this express provision is to be held to be limited to giving the Court power to extend time only when making the decree, a power which according to the cases cited it possessed under the old law, the express provision of Sub-section (3) of Section 66 would become mere

matter of surplusage.

12. The cases cited do not, therefore, in my opinion lend any support to the appellant's contention.

13. Upon weighing the arguments on both sides, I am of opinion that the reasons in favour of the respondent's view far outweigh those on the opposite side; and I would therefore affirm the order of the Lower Appellate Court and dismiss this appeal with costs.

**Rampini, J.**

14. The question for determination in this appeal is whether, when, under the provisions of Section 66(3) of the Bengal Tenancy Act, a Court for special reasons extends the period of fifteen days within which, on payment of the arrears due, a decree for ejectment can be stayed, it can do so subsequently to the framing of the decree, or can only do so when framing the decree. The Judge in the Court below has held that a Court may extend this period subsequently to the framing of the decree, and on behalf of the appellant it is contended that his view of the matter is erroneous.

15. It must be admitted that owing to the section containing no express provision on the point, the question is not free from doubt. But I am inclined to think for the following reasons that the Judge is in error, and that when for special reasons a Court extends the period mentioned in Sub-section (2) of the section, it can only do so when framing the decree and not at any later time.

16. In the first place, the whole section deals with the framing of the decree and the terms in which it should be couched. It does not seem to me to contemplate any proceeding subsequent to the preparation of the decree. It seems to me to prescribe how a decree for ejectment is to be drawn up and what is to be contained in it. It goes on to lay down that a decree for ejectment is not to be executed if the arrears due are paid within fifteen days, and gives a Court power for special reasons only to extend that period. Surely the special reasons must be stated at the time of the preparation of the decree, and the period must be

extended there and then. If it were contemplated by the section that the judgment-debtor might subsequently apply for an extension of the period mentioned in the section, would this not have been expressly prescribed, and would not this matter (an entirely separate and distinct matter from the framing of the decree) not have been dealt with in a separate section

17. Then, if the period mentioned in the section can be extended subsequently, it can apparently be so extended at any subsequent time as long as the decree remains unexecuted. And, further, it can apparently be so extended repeatedly from time to time. So that it would be within the power of a Court to delay the payment of a landlord's arrears, and yet preclude him from ejecting his recusant tenant for years. I cannot think that the Legislature ever intended to give a Court so great a power and so wide a discretion as this, which would enable it to render the provisions of Sub-section (2) of the section entirely nugatory. It is to be remembered that one of the objects of the passing of the Bengal Tenancy Act was to give the landlords 'reasonable facilities for the recovery of their rents.'

18. Again, once a decree is framed, a Court is judicially functus officio. All subsequent proceedings, except applications for review, must relate to the execution of the decree. But if an order under Sub-section (3) can be passed subsequently to the preparation of the decree, then it would seem that in the case of a decree for ejectment the terms of the original decree can be modified in execution, which would appear to me to be contrary to the usual course of judicial procedure.

19. The history of Sub-section (3) would also seem to me to support me in the conclusion I have come to with regard to this matter. The former law (i.e., Section 78 of Act X of 1859 and Section 52 of Bengal Act VIII of 1869) contained no such provision as Sub-section (3) of Section 66 of the present Act. But in the rulings of the Courts, under those sections, it was held that the Court passing the decree, or the Appellate Court, but not the Court executing the decree, had a discretion to extend the period of fifteen days by payment within which period execution could be stayed (see *Nubo Kisto Mookerjee v. Ramessur Goopto* (1866) 18 W.R., 412, note: 2 Wyman, 75; *Sunkur Singh v. Huree Mohun Thakoor* (1874) 22 W.R., 460,

and Puresh Nath Ghose v. Krishto hall Butt (1874) 23 W.R., 50. Under the old law, then, the period of fifteen days could only be extended by the Court of First Instance at the time of framing the decree, or by the Appellate Court when disposing of the appeal from the decree. It could not be extended subsequently by the Court executing the decree. Sub-section (3) of Section 66 of the present Act is no doubt based on these rulings, and it is reasonable to suppose that it is intended to give a Court no further power than in these rulings it was ruled that it was advisable that a Court should have.

20. For these reasons I would decree the appeal.

**Prinsep, J.**

21. In this case a decree for ejectment of a tenant was passed under Section 66 of the Bengal Tenancy Act. That Section (2) requires that in a decree for ejectment for an arrear of rent, the decree shall specify the amount of the arrear and of the interest, if any, due thereon. The decree would also specify the amount of costs, if any, when made payable under it. The object of this is made clear by the following part of that sub-section which declares that 'the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree or, when the Court is closed on the fifteenth day, on the day on which the Court re-opens.'

22. Sub-section (3) further declares that 'the Court may for special reasons extend the period of fifteen days mentioned in the section.'

23. The tenant in this case, before the expiry of the period of fifteen days specified in Sub-section (2), applied under Sub-section (3) for an order to have that period extended.

24. The question raised is whether the application should be made to the Court of execution or to the Court which passed the decree.

25. The lower Court held that the application was properly made to the Court of execution.

26. The learned Judges who heard this second appeal have differed in their construction of this sub-section. Mr. Justice Banerjee is of opinion that the application should be made to the Court of execution, while Mr. Justice Rampini holds that, as it involves an alteration and a reconsideration of the decree for ejectment, the Court which passed the decree is alone competent to deal with the matter. The appeal has now been referred to me as the third Judge.

27. At the outset I would observe that the matter under consideration is purely a matter of form. The Court which passed the decree would ordinarily be the Court to execute it. No doubt decrees are occasionally transferred for execution to another Court (see Section 223 of the Code of Civil Procedure), but having regard to the character of a decree for ejectment of a tenant under Section 66 of the Bengal Tenancy Act, it is very difficult to conceive any case in which such a decree would not be executed by the Court which passed it.

28. In the present case, too, the application under Sub-section (3) to extend the period of fifteen days during which execution under Sub-section (2) could not be taken out, is made within that time and before proceedings had been, or indeed could have been, taken by a Court of execution. The application, therefore, could only be made to the Court which passed the decree. The question under consideration in this case is, therefore, purely one of form rather than of substance. It has undoubtedly been made to the proper Court, but has it been made in a proper form? Can it be made, as it has been made, by a mere petition asking for an order under Sub-section (3) and setting out special reasons as valid grounds, or if it involves a reconsideration of the terms of the decree, should it not be made in the form of an application for review of judgment

29. I propose to consider whether an extension of the term for which execution of a decree for ejectment is suspended is necessarily a modification of the decree. The decree is for ejectment. The law does not require, as in a decree for foreclosure or sale in a suit on a mortgage, that the decree shall specify the date on which the decree shall become absolute in regard to foreclosure or sale, and an order making it absolute. It merely requires that certain items shall be specified in it, and the object of this is to give information to the debtor, so that he may make



the necessary payment, and thus avoid the ejectment; and the law then proceeds to declare that the decree shall not be executed, if the amount so specified and the costs of the suit are paid into Court within fifteen days from the date of the decree, or where the Court is closed on the 15th day, on the day on which the Court re-opens. That seems to me to be a direction to the Court of execution rather than to require a Court in passing a decree for ejectment to state these terms in its decree, and it is also a notice to the debtor how he may avoid the operation of the decree against him. Notwithstanding any order under Sub-section (3) the decree would remain unaffected in its terms. The object of the application is only to obtain suspension of its execution so as to extend to the debtor further time to satisfy the demand of the landlord decree-holder. Probably, in respect of the procedure to be followed, there would be little difference in dealing with such an application, whether it be regarded as an application to the court of execution or to the Court which passed the decree. But there would be a great deference in the Court-fees payable. Court-fees would be payable on an application to the Court of execution merely as on an ordinary petition, whereas on an application for review of judgment, the fee payable would be that of one-half of the fee payable on the plaint. The difference would thus be very considerable. Such consideration would alone make me hesitate to hold that in such a matter the Legislature ever indeed to impose such a heavy burden on a tenant to tenable him for good cause or for special reason as set out in Section 66(3) to avert ejectment from the lands held by him, if for some unforeseen cause he was unable to liquidate within the prescribed time the arrears of rent for which the ejectment had been decreed.

30. Again, if we turn to Section 244 of the Code of Civil Procedure which applies to cases under the Bengal Tenancy Act, we find that question arising between the parties to a suit in which a decree was passed and relating to the execution of the decree are to be determined by order of the (sic) executing the decree. It has been said that if an extension under Sub-section (3) be allowed in execution of a decree, it may be extended repeatedly (sic) to time, and that thus a Court will be able to delay payment of a land (sic) arrears to and also deprive him of the right to eject the tenant. I (sic) can see no hardship in so reading the law. The money due to the (sic) will still bear interest, so that peculiarly he will be protected, any (sic) can grant an extension of time only for special reasons, which I (sic) be that the

tenant must show that he is, for some special reason (sic) ask for such an indulgence. One of the objects off the Bengal (sic) may be to give landlord 'reasonable facilities for the recovery of their (sic) and this is not really defeated by an order under Sub-section (3). But another and an equally paramount subjects is not to allow the ejectment of a tenant except for cogent reasons. One of such reason in the case of a tenant not having a saleable tenant-right is and arrear of rent at the end of a year, and, if this some is paid within a time for special reason fixed by the courts beyond the statutory period, I confess that I fail to see where an injustice is done to the interests of any party. The Act throughout is as much for the tenant as the landlord, and within reasonable limits, it gives a discretion to the courts under Section 66(3) for special reason to step in and avert the termination of a tenancy by carrying into execution a decree for his ejectment.

31. The reported cases on this subject are of little assistance. They were all decided under the now repealed Act X of 1859 and Bengal Act VIII of 1869, which were similar to Section 66(2) of the Bengal Tenancy Act; but these Acts were without any such powers as now contained in Section 66(3) of the Bengal Tenancy Act to mitigate the effect of the execution of a decree for ejectment. It was probably because the Courts held that under those laws a decree for ejectment was absolute, that this discretionary power has been given to be exercised for special reasons. I cannot agree that the exercise of such powers modifies the decree itself. It only suspends its execution, and, during this term, it gives the tenant power to prevent that execution by satisfying the claim of the landlord, and I can find no sufficient reason why such power should not be exercised under Section 244 of the Code of Civil Procedure, as in other matters, between the parties, relating to the execution of the decree.

32. For these reasons I agree with Mr. Justice Banerjee in dismissing this appeal with costs.